

GRABER, Circuit Judge, concurring in part and dissenting in part:

CATHY A. CATTERSON
U.S. COURT OF APPEALS

I concur in part and dissent in part.

1. As I read the district court's order, the court dismissed only Part B of the Third Amended Complaint for failure to follow the court's prior orders. I agree with the majority that the court did not abuse its discretion in dismissing Part B for that reason.

2. Turning to Part A of the Third Amended Complaint, I disagree with the majority's bottom line on two claims: state common-law claims for fraud and misrepresentation. As to those claims, the district court erred in holding that the Third Amended Complaint failed to state a claim. The elements of such a claim are adequately pleaded against the individual defendants with respect to pre-merger statements. I therefore dissent to the extent that the majority affirms the dismissal of such state-law claims.

3. The district court properly analyzed the remainder of Part A of the Third Amended Complaint and permissibly denied another opportunity to amend.